

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>IN RE:</b>	)	
	)	<b>Chapter 11</b>
<b>CITATION CORPORATION, et al.,<sup>1</sup></b>	)	
	)	<b>Case No. _____</b>
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>

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**DEBTORS' MOTION PURSUANT TO BANKRUPTCY CODE §§ 366(b)  
AND 105(a) FOR ORDER DEEMING UTILITY COMPANIES ADEQUATELY  
ASSURED OF FUTURE PERFORMANCE AND ESTABLISHING  
PROCEDURE FOR DETERMINING REQUESTS FOR ADDITIONAL  
ADEQUATE ASSURANCES PURSUANT TO § 366**

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**COME NOW**, Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), and, pursuant to §§ 366(b) and 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), move this Court (this "Motion") to enter an order (i) deeming utility companies adequately assured of future performance, and (ii) establishing procedure for determining requests for additional adequate assurances pursuant to Bankruptcy Code § 366. In support of this Motion, Debtors rely on the Affidavit of Charles P.

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<sup>1</sup> In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries Ltd., and (xxiii) MFC Liquidating Company, Ltd.

Bloome in Support of Chapter 11 Petitions and First Day Orders, filed contemporaneously herewith, and state as follows:

### **JURISDICTION AND VENUE**

1. On September 18, 2004 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108. The Debtors have moved this Court for joint administration of these chapter 11 cases.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtors' chapter 11 cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code §§ 366(b) and 105(a).

### **FACTS**

3. Facing its biggest challenges of all -- a sluggish industry and skyrocketing materials costs -- Citation and its affiliated companies have filed for chapter 11 bankruptcy in the U.S. Bankruptcy Court in Birmingham, Alabama. This action was taken to reorganize Citation's businesses into a profitable company that will continue to serve its customers. The Citation companies continue to operate their businesses and manage their properties as debtors in possession in accordance with the Bankruptcy Code.

4. Since its inception in 1974, Citation has forged a name for itself within the metal components industry by focusing on one overriding goal; total customer satisfaction. Citation has done this by acquiring capable leadership, loyal production workers and responsive suppliers.

5. Like every action Citation has taken over the years, chapter 11 was undertaken with customers in mind. The company is confident that a court-guided reorganization will give Citation the breathing room it needs to improve cash flow and emerge as a profitable company serving its many customers. The Citation companies will continue to use sound management practices to operate their businesses and manage their properties as debtors in possession in accordance with the Bankruptcy Code.

6. Citation is a privately held Delaware corporation headquartered in the Birmingham, Alabama metropolitan area. Through its wholly-owned subsidiaries, Citation designs, develops and manufactures high quality cast, forged, and machined components for the capital and durable goods industries. The products Citation manufactures are made primarily from iron, steel and aluminum materials. Citation's attention to quality, delivery and cost have allowed it to grow its customer base over the years. The company has also grown its business through a series of acquisitions. The Citation companies now own and operate sixteen facilities located in Alabama, Indiana, Wisconsin, Michigan, Illinois, Texas, and North Carolina. The Citation companies employ approximately 5,100 employees, some of whom are unionized.

7. Citation manufactures products for several market segments including the automotive, heavy truck, construction, aerospace, agricultural and commercial industries. Citation produces aluminum and iron castings. Its steel forgings are used in a wide variety of applications including braking, steering, engine and drive train parts for passenger cars and light trucks; suspension and transmission parts for heavy trucks; ground engaging tools for construction equipment; parts for aircraft engines, landing gear and structural airframes; and thousands of other critical parts for capital and durable goods. Citation sells its castings and

forgings to customers throughout the United States. Several of its largest customers are very large tier-one suppliers who make, assemble, and supply parts to automobile manufacturers.

8. Through the 1990s, Citation was a publicly traded company. In December 1999, Citation was taken private by an investment firm based in New York. A fund managed by the same firm continues to own virtually all of the shares of Citation's parent corporation.

9. Citation's cash flow challenges are typical of the industry today. All purchasers of steel have been suffering from the onslaught of record steel price increases. In the last 18 months, the price of steel scrap escalated from its traditional price of \$150 per ton to more than \$400 per ton. Other raw materials prices have also suffered dramatic price increases.

10. Ductile products account for half of Citation's sales. Steel scrap is the primary raw material used to make ductile products. Due to the unprecedented and unexpected price escalations for the purchase of steel scrap, Citation has found it difficult to maintain sufficient operating capital. Although some of Citation's customer relationships include provisions for sharing cost increases for steel scrap, Citation's relationships with several of its largest customers have no such provisions. Although Citation continues to work with customers to maintain positive, mutually beneficial relationships, Citation to date has been forced to bear the full burden of the increased price of steel scrap in many of its relationships. Citation's aluminum and other divisions have fared better, largely due to their ability to pass on the raw materials price increases.

11. In addition to the escalating price of steel scrap, Citation -- like numerous U.S. companies that provide employees with healthcare benefits -- has incurred heavy increases in the cost of health care for Citation's employees. This and an increase in the cost of utilities has further hampered Citation's cash flow.

12. Citation has a strong market share of the North American ductile iron parts industry, competing primarily with North American companies only. This is because the weight, size, and shapes of the materials and product and heavy industry's requirements for just-in-time or staged delivery generally require the ductile iron foundries to be located on the same continent as the customers. Nonetheless, there is foreign competition, primarily from China and India.

13. The entire North American ductile iron parts industry finds itself in the same predicament as Citation. Some companies have recently exited this business altogether while a few competitors are better capitalized. Citation is determined to stay in business, and to continue serving the customers, employees and suppliers who have come to rely on Citation as a partner in success. Citation's management sees chapter 11 as a positive step to better position itself until the price of steel and other raw materials can reach an equilibrium within the industry and the true cost of materials can be passed through to the end user of the product.

14. As already mentioned, one of the most significant costs to Citation has been the unprecedented increase in the price of steel scrap. Combined with Citation's debt load, this has resulted in a shortage of cash flow. For the fiscal year ended September 28, 2003, Citation and its subsidiaries reported net sales of approximately \$640,000,000 and a net loss of approximately \$120,000,000.

15. Citation and its subsidiaries are indebted under a bank debt facility in the approximate amount of \$325,000,000. This indebtedness is secured by a first lien on virtually all of the Debtors' assets. Citation's parent corporation is separately indebted under a different debt facility to a different set of creditors in the approximate amount of \$140,000,000. Citation generally has trade debt of approximately \$60,000,000.

16. Citation is owed receivables from its customers that generally total around \$90,000,000. Citation maintains inventory that has a book value of approximately \$45,000,000. Citation owns property, plants, and equipment of substantial value. Its greatest assets, however, are Citation's strong customer base and its many loyal employees.

17. As a part of its ongoing strategic review and assessment of their financial condition, Citation has determined to take advantage of its strong market share position, to strengthen the balance sheet, and to operate successfully in today's competitive environment, it must reduce its existing debt burden and increase operating efficiencies. Citation seeks protection under chapter 11 of the Bankruptcy Code to provide the necessary time to stabilize its finances and to develop and to implement a strategic plan to return its business to sustained profitability.

18. Citation filed bankruptcy with four primary goals in mind: (a) to reshape the Debtors' capital structure; (b) to improve cost efficiencies; (c) to maintain product manufacture and delivery; and (d) to negotiate with its key customers to pass on raw materials price increases. During its stay as a debtor-in-possession in chapter 11, Citation will continue to serve its customers by manufacturing high quality products at Citation's many locations throughout the United States. Once these four key goals are sufficiently met by the bankruptcy proceedings, Citation will emerge from this process as a strong, viable, and independent business positioned for increased competitiveness and sustained profitability.

#### **RELIEF REQUESTED**

19. In connection with the operation of their businesses and management of their properties, the Debtors obtain electricity, gas, water, refuse, telephone, trash removal, and other similar services (collectively, the "Utility Services") from approximately 80 different utility

companies (the "Utility Companies") throughout the United States.<sup>2</sup> Attached hereto as Exhibit "A" is a list of all, or substantially all, the Utility Companies providing services to the Debtors as of the Petition Date. The Utility Services are essential to the Debtors' operations and, therefore, must continue uninterrupted during the pendency of the Debtors' chapter 11 cases.

20. The relief requested herein, however, is requested with respect to all Utility Companies and is not limited to those listed on Exhibit "A." Moreover, some of the entities listed on Exhibit "A" may provide services to the Debtors in a capacity other than as a utility. Non-utilities are not entitled to adequate assurance of payment under Bankruptcy Code § 366. The Debtors reserve all rights, claims and defenses with respect to whether the entities listed on Exhibit "A" are "utilities" within the meaning of § 366.

21. The Debtors have a good payment history with the Utility Companies. To the best of the Debtors' knowledge, there are few or no material defaults or arrearages with respect to their undisputed Utility Services invoices, other than the payment interruptions that may be caused by the commencement of these chapter 11 cases.

22. The Debtors reserve all rights, claims and defenses under § 365 of the Bankruptcy Code; without limitation, nothing in this Motion shall be deemed a request for approval to assume, or an expression of intent to assume, any lease or contract with the Utility Companies.

23. Pursuant to Bankruptcy Code § 366, within twenty (20) days after the commencement of a bankruptcy case, a utility may not alter, refuse, or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of the case or the failure of the debtor to pay a prepetition debt. Following the 20-day period, however, the Utility

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<sup>2</sup> The Bankruptcy Code does not define the term "utility." While it is unclear whether all the Utility Companies fall within such definition, the Debtors have included all the Utility Companies in this motion out of an abundance of caution.

Companies arguably may discontinue service if the Debtors do not provide adequate assurance of its future performance of postpetition obligations to them. Section 366 provides as follows:

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

11 U.S.C. § 366. Accordingly, by this Motion, the Debtors seek authority to provide to the Utility Companies "adequate assurance" within the meaning of § 366 by (i) granting administrative expense status for all amounts coming due to the Utility Companies post-petition and (ii) paying prepetition amounts owed to Utility Companies as they become due, provided the Utility Companies accept the proposal for adequate assurance set forth in this Motion and do not seek additional adequate assurance. Given the Debtors' good payment history and the substantial number of Utility Companies providing Utility Services to the Debtors, the Debtors seek an order of this Court deeming the Utility Companies adequately assured without requiring the Debtors to pay deposits.

24. The Debtors seek immediate entry of an order (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of unpaid prepetition invoices; (b) providing that the Utility Companies have "adequate assurance of payment" within the meaning of Bankruptcy Code § 366, without the need for payment of additional deposits or security; (c) establishing procedures for determining requests for



additional adequate assurance; (d) providing that if a Utility Company timely objects to entry of an order granting this Motion and requests additional adequate assurance that the Debtors believe is unreasonable, the Debtors will promptly file a motion for determination of adequate assurance of payment (the “Determination Motion”) and request that the Court set such Determination Motion for a hearing (the “Determination Hearing”); (e) providing that any Utility Company that does not timely request additional adequate assurance, as provided for herein, shall be deemed to have adequate assurance under § 366; (f) authorizing the Debtors to pay prepetition amounts to Utility Companies as they come due; and (g) providing that, in the event that a Determination Motion is filed or a Determination Hearing is scheduled, any objecting Utility Company shall be deemed to have adequate assurance of payment under § 366 without the need for payment of additional deposits or other securities until an order of the Court is entered resolving such Determination Motion and Determination Hearing.

25. If the Utility Companies are permitted to terminate service twenty (20) days after the Petition Date, the Debtors would be unable to operate their businesses, to the severe detriment of their estates, creditors and employees. The Debtors then would be forced to pay whatever amounts are demanded by the Utility Companies or face the cessation of essential utility services, and ultimately, their businesses.

26. Relief similar to that requested herein has been granted by courts in other substantial chapter 11 cases in this jurisdiction. *See, e.g., In re Meadowcraft, Inc.*, Case No. 02-06910-TOM (Bankr. N.D. Ala. 2002); *Décor Gravure Corp., et al.*, Case No. 02-00895-TOM (Bankr. N.D. Ala. 2002); *Karsons Internat'l, Inc., et al.*, Case Nos. 02-09409 through 02-09411-BGC (Bankr. N.D. Ala. 2002).

27. The Debtors seek authorization for the applicable banks and financial institutions to process, honor and pay any and all checks on account of prepetition payments to Utility Companies and to rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

**A. IN OPERATING THEIR BUSINESSES, THE DEBTORS RELY UPON UTILITY SERVICES FROM A LARGE NUMBER OF UTILITY COMPANIES.**

28. Section 366 of the Bankruptcy Code applies to entities providing electricity, gas, oil, water, trash removal, and/or telephone services, as well as any other entity that supplies services that cannot be readily obtained or replaced elsewhere, or which constitutes a monopoly with respect to the services it provides to a debtor. *See e.g., In the Matter of Security Investment Properties, Inc.*, 559 F.2d 1321, 1325-26 (5th Cir. 1977) (public utility, while entitled to adequate assurance of payment, has a duty to serve).<sup>3</sup> *See also, generally, e.g., In re Sun-Tel Communications, Inc.*, 39 B.R. 10 (Bankr. S.D. Fla. 1984) (applying § 366 to telephone services); *In the Matter of Sayman's, Inc.*, 15 B.R. 229 (Bankr. N.D. Ga. 1981) (same).

29. The wide latitude to be afforded in determining those entities that constitute utilities under § 366 is recognized in the legislative history:

This section [366] is intended to cover utilities that have some special position with respect to the debtor, such as an electric company, gas supplier, or telephone company that is a monopoly in the area so that the debtor cannot easily obtain comparable service from another utility.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 350 (1977); S. Rep. No. 989, 95th Cong., 2nd Sess. 60 (1978).

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<sup>3</sup> Fifth Circuit decisions rendered on or before September 30, 1981 are binding precedent in the Eleventh Circuit. *See e.g., Stavropoulos v. Firestone*, 361 F.3d 610 (11th Cir. 2004).

30. As set forth above, to operate their businesses and manage their properties, the Debtors obtain Utility Services from more than 80 Utility Companies throughout the United States. The Debtors' businesses and successful reorganizations depend upon the Utility Services continuing uninterrupted during the Debtors' chapter 11 cases. Due to the substantial number of Utility Companies providing essential Utility Services to the Debtors, the Debtors could be forced to pay exorbitant amounts in deposits demanded by the Utility Companies or suffer the consequences, which would be detrimental to the Debtors' estates, creditors and employees, appurtenant to the loss of the Utility Services. *See Virginia Electric & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 648 (2d Cir. 1997) ("sheer number of [debtor's] utility suppliers" was a factor considered in not requiring a deposit). The Utility Services are essential to the Debtors' operations and reorganizations.

**B. THE UTILITY COMPANIES ARE ADEQUATELY ASSURED OF FUTURE PAYMENT.**

31. Under § 366(b), this Court may determine the standards for adequate assurance of future payments for Utility Services. Bankruptcy courts have the exclusive responsibility for determining what constitutes adequate assurance for payment of post-petition utility charges and are not bound by local or state regulations. *See generally, e.g., Matter of RobMac, Inc.*, 8 B.R. 1 (Bankr. N.D. Ga. 1979) (adequacy of assurance is not determined by state public service commission or similar rule-making entity); *In re Stagecoach Enterprises, Inc.*, 1 B.R. 732 (Bankr. M.D. Fla. 1979) (same). *See also, e.g., In re Central Foundry Co.*, 62 B.R. 52, 55 (Bankr. N.D. Ala. 1985) (rejecting gas company's argument for demand charges based on state utility laws); and *In the Matter of Fountainebleau Hotel Corp.*, 508 F.2d 1056, 1059 (5th Cir.

1975)<sup>4</sup> (finding that a telephone company's tariffs, giving company right to demand deposit, are no different from any state law and, therefore, subordinated to federal bankruptcy law). While the utility company may initially set an amount of deposit, ultimate determinations of adequate assurance under § 366 are fully within the Court's discretion. *See generally, e.g., Stagecoach*, 1 B.R. 732; *RobMac*, 8 B.R. 1; *In re Tarrant*, 190 B.R. 704 (Bankr. S.D. Ga. 1995); and *In re Marion Steel Co.*, 35 B.R. 188, 195 (Bankr. D. Ohio 1983).

32. "Adequate assurance" under § 366 is not synonymous with "adequate protection." In determining adequate assurance, the Court is not required to give the Utility Companies the equivalent of a guaranty of payment but must only determine that the Utility Companies are not subject to an unreasonable risk of nonpayment for postpetition services. *See In re Caldor, Inc.*, 199 B.R. 1 (Bankr. S.D.N.Y. 1996); *In re Santa Clara Circuits West, Inc.*, 27 B.R. 680, 685 (Bankr. D. Utah 1982); *In re George C. Frye Co.*, 7 B.R. 856, 858 (Bankr. D. Me. 1980). Further, in making its decision as to the need for any additional postpetition deposit, the Court should ensure that the utility is treating the debtor the same as it would treat a similarly situated, nonbankruptcy debtor. *See In re Whitaker*, 84 B.R. 934, 937 (Bankr. E.D. Pa. 1988), *aff'd* 882 F.2d 791 (3d Cir. 1988).

33. Whether an utility is subject to an unreasonable risk of nonpayment must be determined from the facts and circumstances of each case. *See Adelphia Bus. Solutions, Inc.*, 280 B.R. 63,80 (Bankr. S.D.N.Y. 2002); *In re Keydata Corp.*, 12. B.R. 156 (B.A.P. 1st Cir. 1981). In a leading case, the United States Court of Appeals for the Second Circuit has held that where, as here, debtors have timely paid their utility bills prior to the commencement of their chapter 11 cases, the administrative expense priority provided in §§ 503(b) and 507(a)(1) of the

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<sup>4</sup> *See* note 3 *supra*.

Bankruptcy Code constitutes adequate assurance of payment, and no deposit or other security is required. *See Caldor*, 117 F.3d at 650 (a bankruptcy court's "authority to modify the amount of any 'deposit or other security,' necessarily permits the court, in appropriate circumstances, to excuse a debtor from the 'deposit or other security' requirement altogether") (emphasis added). *See also, In re Wells*, 280 B.R. 701, 702 (Bankr. S.D. Ala. 2001); *In re Demp*, 22 B.R. 331, 332 (Bankr. E.D. Pa. 1982).

(i). No Deposit Is Necessary Given The Debtors' Payment History And Financial Situation.

34. The Debtors have a good payment history with the Utility Companies. To the best of the Debtors' knowledge, there are few or no material defaults or arrearages with respect to their undisputed Utility Services invoices, other than the payment interruptions that may be caused by the commencement of these chapter 11 cases. The Debtors will pay prepetition amounts as same become due. The Debtors anticipate that prepetition amounts will not exceed \$7,000,000. If the Debtors' anticipation is incorrect, the Debtors will seek further leave to pay a greater amount.

35. Section 366 contemplates that utility providers must receive assurance of payment that is sufficient given the debtor's financial situation. *See e.g., In re C.T. Harris, Inc.*, 295 B.R. 405 (Bankr. M.D. Ga. 2003) (debtor's current liquidity sufficient to establish adequate assurance of future payment). Thus, where a debtor has a good history of complete and prompt payment, as the Debtors here have, no deposit is necessary. *See e.g., Wells*, 280 B.R. at 702 (approving agreement to be incorporated into chapter 13 plan which would allow debtor to continue to receive electrical power without a deposit but lifting the stay as to any enforcement or termination proceedings based upon debtor's default in future); and *Virginia Electric & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 648-49 (2d Cir. 1997) (agreeing with the bankruptcy and

district courts and quoting from the bankruptcy court in concluding that debtor would not be required to pay a deposit because there was "no reason to doubt that [Caldor's] prepetition history of making [utility] payments on a [timely] and current basis [would] not continue postpetition"). *See also, e.g., Demp*, 22 B.R. at 332 ("a utility cannot read Section 366(b) as giving rights to security if there has been no default"; thus, a debtor's good payment history is sufficient); and *In re Hobbs*, 20 B.R. 488 (Bankr. E.D. Pa. 1982) (same, even where debtor's payments were late, consistency and completeness was sufficient).

(ii). Administrative Priority Is Sufficient 'Adequate Assurance.'

36. The Debtors propose to provide adequate assurance in the form of payment as an administrative expense of their chapter 11 estates pursuant to §§ 503(b) and 507(a)(1) for Utility Services rendered to the Debtors by the Utility Companies following the Petition Date, without prejudice to the rights of any Utility Company to move this Court for additional assurance for itself within twenty (20) days from the date the proposed order is signed. Any burden of proof would similarly remain unaffected.

37. Pursuant to §§ 503(b) and 507(a)(1) of the Bankruptcy Code, the Utility Companies will be entitled to administrative expense priority for Utility Services rendered after the Petition Date. Congress contemplated circumstances, such as those in the present case, in which this priority status alone would be sufficient "adequate assurance": "If an estate is sufficiently liquid, the guarantee of an administrative expense priority may constitute adequate assurance of payment for future services. It will not be necessary to have a deposit in every case." H.R. Rep. No. 595, 95th Cong., 1st Sess. 350 (1977), U.S. Code Cong. & Admin. News 1978, 5963, 6306. *See also, e.g., C.T. Harris*, 295 B.R. 405 (finding that debtor's current

liquidity and post-petition financing facility in place made administrative expense priority sufficient "adequate assurance" to utility companies without the need for security deposits).

38. The Debtors pay each Utility Company directly and as billed. The Debtors seek authorization to pay any unpaid prepetition amounts for Utility Services as same become due. To the best of the Debtors' knowledge, the Debtors have not had any material defaults or arrearages with respect to their undisputed Utility Service invoices, other than the payment interruptions that may be caused by the commencement of these chapter 11 cases.

39. Based on annual sales figures, the Debtors make approximately \$2,000,000 in sales per day on a consolidated basis. The interference caused by the cessation of utility services for even one day could have significant effects on the Debtors' profitability. To avert such harm, the Debtors would be required to pay whatever amounts are demanded by the Utility Companies to avoid the cessation of necessary Utility Services and, ultimately, the demise of their businesses. *See In re Dandi-Line Plants, Inc.*, 27 B.R. 868, 870 (Bankr. N.D. Ala. 1983) (staying effect of order in favor of utility company to terminate service or require deposit despite debtor's failure to pay for three months post-petition where cessation of service would devastate debtor's chances for successful reorganization).

40. Courts have recognized circumstances in which the harm to a debtor's ability to reorganize necessarily determines that no additional security, other than administrative priority, be required. *See e.g., In the Matter of Penn Central Transportation Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972):

[T]he fact that charges for energy required for current railroad operations are expenses of administration, entitled as such to priority over other categories of claims against the debtor, minimizes the risk of non-payment to the [utility company] even if the attempted reorganization should be unsuccessful. The district court weighed risk of harm to the [utility company] in these circumstances

against what it found to be a substantial impediment to continuing operation if many millions of dollars should be taken from the railroad's available cash at this time and surrendered as security for future billings to some forty utilities that serve it. Finding the risk of harm to the [utility company] slight and the likelihood great that the posting of large deposits with all concerned public utilities would jeopardize the continuing operation of the railroad merely to give further security to suppliers who already are reasonably protected, the reorganization court permissibly refused to require the deposit sought by the [utility company].

41. Prior to the Petition Date, the average monthly cost of Utility Services was approximately \$5.1 million (on a consolidated basis). If the Utility Companies are allowed to require deposits, even if equivalent to only one month's charges, such demand could easily exceed \$5 million and the effect to the Debtors' financial situation would be devastating. *See e.g., Caldor*, 117 F.3d at 648 ("sheer number of [debtor's] utility suppliers" was a factor considered in not requiring a deposit); *see also, Adelphia*, 280 B.R. 63, 82 (stating that courts determining adequate assurance must balance "the need to protect utilities from unreasonable risk of nonpayment with the loss of debtor liquidity that would be occasioned by a mechanical imposition of requirements for deposits").

42. As noted above, the Debtors have a good payment history with their Utility Companies. To the best of the Debtors' knowledge, there are few, if any, material defaults or arrearages with respect to undisputed Utility Service invoices, other than payment interruptions that may be caused by the commencement of these chapter 11 cases. The Debtors represent that they will continue to pay all postpetition obligations, including utility bills, as billed and when due. Contemporaneously herewith, the Debtors have requested authorization to enter into a debtor-in-possession financing facility, which, if approved, will provide the Debtors with more than sufficient availability of funds with which to pay all postpetition utility charges. The adequate assurance proposed herein, which includes granting administrative expense priority to



any past due utility obligations arising in the postpetition period, will provide more than sufficient assurance to the Utility Companies.

43. The rights of the Utility Companies will not be prejudiced should the relief requested in the motion be granted, because the Utility Companies are permitted to come before this Court and seek relief upon a change in circumstances. The Utility Companies will have an opportunity to petition the Court on an expedited basis in the event of a default by the Debtors. The Debtors propose that the Utility Companies have, under such circumstances, the ability to request additional adequate assurances within twenty (20) days of the date on which the proposed order is signed. Accordingly, the Debtors believe that the Utility Companies are sufficiently assured of payment.

44. The Debtors' proposed adequate assurance is in keeping with the spirit and intent of Bankruptcy Code § 366, is not prejudicial to the rights of any Utility Company, and is in the best interest of the Debtors' and their estates and creditors. Moreover, as shown above, relief similar to that requested herein has been granted in other chapter 11 cases in this district.

#### **NOTICE AND PRIOR MOTIONS**

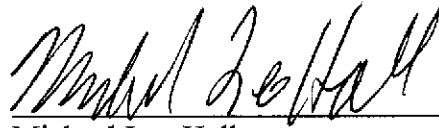
45. Notice of this Motion has been given to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of Internal Revenue Service for the Northern District of Alabama. The Debtors submit that given the circumstances and the notice of the relief requested herein, no other or further notice is required.

46. No previous request for the relief sought herein has been made to this or any other court.

**WHEREFORE**, the Debtors request this Court enter an order, substantially similar to the order attached hereto as Exhibit "B,"

- (a) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of unpaid prepetition invoices;
- (b) providing that the Utility Companies have "adequate assurance of payment" within the meaning of Bankruptcy Code § 366, without the need for payment of additional deposits or security;
- (c) establishing procedures for determining requests for additional adequate assurance;
- (d) providing that if a Utility Company timely objects to entry of an order granting this Motion and requests additional adequate assurance that the Debtors believe is unreasonable, the Debtors will promptly file a motion for determination of adequate assurance of payment (the "Determination Motion") and request that this Court set such Determination Motion for a hearing (the "Determination Hearing");
- (e) providing that any Utility Company that does not timely request additional adequate assurance, as provided for herein, shall be deemed to have adequate assurance under § 366;
- (f) authorizing the Debtors to pay prepetition amounts to Utility Companies as they come due, provided that such payments do not exceed \$7 million in the aggregate;
- (g) providing that, in the event that a Determination Motion is filed or a Determination Hearing is scheduled, any objecting Utility Company shall be deemed to have adequate assurance of payment under § 366 without the need for payment of additional deposits or other securities until an order of the Court is entered resolving such Determination Motion and Determination Hearing; and
- (h) authorizing the applicable banks and financial institutions to process, honor and pay any and all checks on account of prepetition payments to Utility Companies and to rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with the Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

Dated this the 18 day of September, 2004.



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**Exhibit "A"****List of Utility Providers (by Debtor)****Citation Corporation**

<u>Service</u>	<u>Provider</u>
Telephone (local)	ICG Communications Corporate Office 161 Inverness Drive West Englewood, CO 80112 Payments to Dept LA 21400 Pasadena, CA 91185-1400
Telephone (long distance)	MCI 3300 East Renner Road Richardson, TX 75082

**Bohn Aluminum, Inc.**

<u>Service</u>	<u>Provider</u>
Telephone	Verizon North P.O. Box 920041 Dallas, TX 75392-0041
Telephone	Broadwing Telecommunications P.O. Box 741840 Cincinnati, OH 45274-1840
Electric	American Electric Power P.O. Box 24412 Canton, OH 44701-4412
Gas	Northern Indiana Fuel & Light Co., Inc. P.O. Box 526 Auburn, IN 46706
Gas	Energy USA - TPC STATE OF ALABAMA 1500 165th St CISC Building Hammond, IN 46324
Water	Dept. of Water & Sanitation 201 S. Broadway Butler, IN 46721
Garbage	National Serv-All 6321 Macbeth Road Fort Wayne, IN 46809

List of Utility Providers (by Debtor)

**Berlin Foundry Corporation**

<u>Service</u>	<u>Provider</u>
Electric	Alliant Energy P.O. Box 77003 Madison, WI 53707-1003
Gas	Kaztex Energy N16 w23217 Stone Ridge Dr. Waukesha, WI 53188
Water	Berlin Water & Sewer P.O. Box 272 Berlin, WI 54923
Garbage (waste removal)	Hylar Septic Service W668 Buttercup Court Berlin, WI 54923
Garbage (waste removal)	Chief Liquid Waste Corp. 625 S. Douglas Street Ripon, WI 54971

**Castwell Products, Inc.**

<u>Service</u>	<u>Provider</u>
Telephone (local)	SBC Bill Payment Center Chicago, IL 60663
Telephone (long distance)	Global Crossing (long dist) P.O. Box 741276 Cincinnati, OH 45274
Telephone - is this landline or cellular?	Verizon P.O. Box 790406 St. Louis, MO 63179
Electric	Ameren Energy Marketing 300 Liberty Street Peoria, IL 61602
Electric	ComEd P.O. Box 805376 Chicago, IL 60680

List of Utility Providers (by Debtor)

Gas	Centerpoint Energy P.O. Box 3029 Carol Stream, IL 60132
Water	Village of Morton Grove 6101 Capulina Morton Grove, IL 60053
Garbage (waste removal)	Waste Management-Northwest 1021 E. Green St. P.O. Box 278 Franklin Park, IL 60131

**Citation Aluminum, LLC**

<u>Service</u>	<u>Provider</u>
Telephone (local)	Bellsouth P.O. Box 105262 Atlanta, GA 30348
Telephone (long distance)	Frontier Communications P.O. Box 20919 Rochester, NY 14602
Electric	Alabama Power Company Drawer #201 P.O. Box 11407 Birmingham, AL 35246
Electric	Baldwin County EMC P.O. Box 220 Summerdale, AL 36580
Gas	BP Energy 605 Bel Air Blvd Mobile, AL 36606
Water	City of Bay Minette Utilities 25 Hand Avenue Bay Minette, AL 36507
Garbage (waste removal)	BFI P.O. Box 9001625 Louisville, KY 40290

List of Utility Providers (by Debtor)

**Citation Castings, LLC**

<u>Service</u>	<u>Provider</u>
Electric	Bessemer Utilities P.O. Box 1246 Bessemer, AL 35021
Electric	Alabama Power Company P.O. Box 242 Birmingham, AL 35292
Gas	Alabama Gas of Selma P.O. Box 11407 Birmingham, AL 35246
Gas	Alabama Gas P.O. Box 11407 Birmingham, AL 35246
Water	Bessemer Utilities P.O. Box 1246 Bessemer, AL 35021
Water	Crystal Springs of Alabama 2919 3rd Avenue Birmingham, AL 35206
Garbage (trash)	Waste Management of AL P.O. Box 9001054 Louisville, KY 40290

**Subsidiary -- Alabama Ductile Casting Company**

Telephone	Bellsouth 85 Annex Atlanta, GA 30385
Electric	Alabama Power Company P.O. Box 242 Birmingham, AL 35292
Gas & Water	City of Brewton P.O. Box 368 Brewton, AL 36427

List of Utility Providers (by Debtor)

<b>Subsidiary -- Citation Foam Casting Company</b>	
Telephone	Bellsouth P.O. Box 105262 Atlanta, GA 30348-5262
Electric	Alabama Power Company P.O. Box 242 Birmingham, AL 35292
Gas	Alabama Gas Corporation P.O. Box 11407 Birmingham, AL 35246-0022
Water	City of Columbiana 107 Mildred Street Columbiana, AL 35051
Garbage (gen. waste removal)	Browning-Ferris Industries P.O. Box 9001626 Louisville, KY 40290-1626
Garbage (general solid waste)	Video Industrial 113 Sheridan Road Birmingham, AL 35214-4671
<b>Subsidiary -- Citation Marion</b>	
Telephone	Bellsouth P.O. Box 105262 Atlanta, GA 30348-5262
Electric	Alabama Power P.O. Box 242 Birmingham, AL 35292
Gas	Alagasco P.O. Box 730 Selma, AL 36702-0730
Water	Marion Water & Sewer P.O. Box 125 Marion, AL 36756
Garbage	Waste Management of AL P.O. Box 9001054 Louisville, KY 40290-1054



List of Utility Providers (by Debtor)

Other Gases (oxygen, nitrogen)	Messer MG Industries P.O. Box 8500-S-4385 Philadelphia, PA 19178-4385
<b>Subsidiary -- Foundry Services Company</b>	
Telephone (local)	Sprint P.O. Box 96028 Charlotte, NC 28296
Electric	Progress Energy Raleigh, NC 27698
Water	Town of Biscoe P.O. Box 26 Biscoe, NC 27209
Garbage	GDS P.O. Box 9001840 Louisville, KY 40290
Other Gases (propane)	Van Derveer Gas Service 2265 NC 24-27 Hwy E Biscoe, NC 27209

**Citation Lake Zurich, LLC**

<u>Service</u>	<u>Provider</u>
Telephone	SBC Bill Payment Center Chicago, IL 60663-0001
Telephone	Nextel Communications P.O. Box 6220 Carol Stream, IL
Telephone	A T & T P.O. Box 9001309 Louisville, KY 40290-1309
Electric	Commonwealth Edison Co. P.O. Box 6037 Chicago, IL 60690

List of Utility Providers (by Debtor)

Gas	Centerpoint Energy Marketing P.O. Box 3029 Carol Stream, IL 60132
Water	Village of Lake Zurich 70E Main Street Lake Zurich, IL 60047
Garbage	Waste Management North 1021 E. Green Street Franklin Park, IL 60131
Garbage (general trash removal)	Groot Recycling & Waste 2500 Landmeier Road Elk Grove Village, IL 60007

**Citation Michigan, LLC**

<u>Service</u>	<u>Provider</u>
Telephone	Focal Communications 23800 W. Ten Mile Rd. Suite 100 Southfield, MI 48034
Telephone	SBC Bill Payment Center Saginaw, MI 48663
Electric	Detroit Edison 2000 2nd Avenue Detroit, MI 48226
Gas	Consumers Energy P.O. Box 30090 Lansing, MI 48909
<b>Sub-Subsidiary -- Citation Grand Rapids, LLC</b>	
Telephone	SBC P.O. Box 530 Saginaw, MI 48663
Telephone	Telegration (long distance) P.O. Box 3010 Birmingham, MI 48012-3010

List of Utility Providers (by Debtor)

Telephone - is this landline or cellular?	Nextel P.O. Box 4191 Carol Stream, IL 60197-4191
Electric	Consumers Energy P.O. Box 30090 Lansing, MI 48909-7590
Electric	DTE Energy P.O. Box 67-069A Detroit, MI 48627-0069
Gas	Consumers Energy P.O. Box 30090 Lansing, MI 48909-7590
Gas	Charlevoix Energy 15 Bridge Street Charlevoix, MI 49720
Water	City of Lowell 301 East Main Street Lowell, MI 49331
Water	City of Grand Rapids Room 220 City Hall 300 Monroe Avenue NW Grand Rapids, MI 49503
Garbage (refuse)	Waste Management P.O. Box 9001054 Louisville, KY 40290-1054
Garbage (refuse)	Sunset Waste 2471 Wilshire Jenison, MI 49428

**Citation Wisconsin LLC**

<u>Service</u>	<u>Provider</u>
Telephone	SBC Bill Payment Center Saginaw, MI 48663-0003

List of Utility Providers (by Debtor)

Telephone	Time Warner Telecom P.O. Box 172567 Denver, CO 80217
Telephone	Norstan Financial Services P.O. Box 8500-9805 Philadelphia, PA 19178
Electric	Wisconsin Gas Company d/b/a WE Energies 333 West Everett St. Milwaukee, WI 53290-0001
Gas	Wisconsin Gas Company d/b/a WE Energies 333 West Everett St. Milwaukee, WI 53290-0001
Gas	Amerigas Milwaukee 632 S. 84th Street Milwaukee, WI 53214
Water	Village of Menomonee Falls W156 N8480 Pilgrim Road Menomonee Falls, WI 53051
Water	Oconomowoc City Utilities 174 E. Wisconsin Avenue Oconomowoc, WI 53066
Garbage	Waste Connection 7819 Cedar Creek Road Cedarburg, WI 53012

**TSC Texas Corporation** (not operating)

**Texas Steel Corporation** (not operating)

Affiliate -- Texas Foundries, Ltd.	
<u>Service</u>	<u>Provider</u>
Telephone	Consolidated Communications P.O. Box 660034 Dallas, TX 75266-0161
Electric	TXU Energy P.O. Box 660161 Dallas, TX 75266-0161

List of Utility Providers (by Debtor)

Gas	CLECO Energy P.O. Box 150306 Lufkin, TX 75915-0306
Water & Sewer	City of Lufkin P.O. Drawer 190 Lufkin, TX 75901
Garbage	City of Lufkin P.O. Drawer 190 Lufkin, TX 75901

**Citation Wisconsin Forging, LLC (not operating)**

<b>Sub-Subsidiary -- Interstate Southwest, Ltd. (also affiliated with Texas Steel Corp.)</b>	
Electric	Entergy P.O. Box 61009 New Orleans, LA 70161
Gas	Navasota LP Gas P.O. Box 466 Navasota, TX 77858
Gas	Williams Alloy & Welding Equipment P.O. Box 41127 Houston, TX 77241-1127
Gas	Cleco Energy 1155 Dairy Ashford, Suite 700 Houston, TX 77079
Water & Sewer	City of Navasota P.O. Box 910 Navasota, TX 77858
Garbage (waste removal)	Gulf Coast Waste Management 16810 Bridle Oak Drive Cypress, TX 77433
Garbage (waste removal)	Waste Management Houston Area 100 Genoa Red Bluff Rd. Houston, TX 77034-3909

List of Utility Providers (by Debtor)

Garbage (waste removal)	Univar USA Inc. 777 Brisbane Street Houston, TX 77061
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**HI-TECH, Inc.**

<u>Service</u>	<u>Provider</u>
Telephone	Noble REMC Transworld Network Cor. 7702 Woodland Center Blvd. Suite 50 Tampa, FL 33614
Electric	Noble County REMC P.O. Box 137 Albion, IN 46701-0137
Gas	No. Indiana Fuel & Light Co. P.O. Box 526 220 E. Seventh St. Auburn, IN 46706-0526
Water & Sewer	Albion Water & Wastewater Dept. P.O. Box 27 Albion, IN 46701
Garbage (trash disposal)	National Serv-All, Inc. 6231 MacBeth Rd. Fort Wayne, IN 46809

**Iroquois Foundry Corporation**

<u>Service</u>	<u>Provider</u>
Electric	Alliant Utilities Wisconsin Power and Light P.O. Box 77003 Madison, WI 53707-1003

List of Utility Providers (by Debtor)

Gas	Centerpoint Energy Marketing 800 LaSalle Avenue Suite 2230 Minneapolis, MN 55402-2033
Garbage (general waste)	Waste Management 304 West Sunny Lane Janesville, WI 53546

Total Average Monthly Cost (All Debtors)

<b>Debtors Not Operating as of the Petition Date</b>
Citation Camden Casting Center, Inc.
Citation Precision, Inc.
TSC Texas Corporation
Texas Steel Corporation
MFC Liquidating Company, Ltd. (affiliate)
Citation Wisconsin Forging, LLC
Mansfield Foundry Corporation
OBI Liquidating Corp.

**Exhibit "B"**

Proposed Order Deeming Utility Companies Adequately Assured

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

IN RE:	)	
	)	<b>Chapter 11</b>
CITATION CORPORATION, et al., <sup>1</sup>	)	
	)	<b>Case No. [Enter Case #]</b>
Debtors.	)	<b>(Jointly Administered)</b>

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**ORDER DEEMING UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE  
PERFORMANCE AND ESTABLISHING PROCEDURES FOR DETERMINING  
REQUESTS FOR ADDITIONAL ADEQUATE ASSURANCES PURSUANT TO  
BANKRUPTCY CODE § 366**

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This matter came to be heard upon the motion (the "Motion") of Citation Corporation ("Citation"), its holding company, and certain of its direct and indirect subsidiaries (the "Subsidiaries"), as debtors and debtors in possession (collectively, the "Debtors"), pursuant to § 366(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") for an order (i) deeming utility companies adequately assured of future performance, and (ii) establishing procedures for determining requests for additional adequate assurances pursuant to § 366, all as more fully set forth in the Motion. Upon consideration of the Affidavit of Charles P.

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<sup>1</sup> In addition to the Citation Corporation, the Debtors include the following entities: (i) Citation Holding Company, (ii) Berlin Foundry Corporation, (iii) Bohn Aluminum, Inc., (iv) Castwell Products, Inc., (v) Citation Precision, Inc., (vi) HI-TECH, Inc., (vii) Iroquois Foundry Corporation, (viii) ISW Texas Corporation, (ix) Mansfield Foundry Corporation, (x) OBI Liquidating Corp., (xi) Texas Steel Corporation, (xii) TSC Texas Corporation, (xiii) Citation Aluminum, LLC, (xiv) Citation Castings, LLC, (xv) Citation Grand Rapids, LLC, (xvi) Citation Lake Zurich, LLC, (xvii) Citation Michigan, LLC, (xviii) Citation Wisconsin Forging, LLC, (xix) Citation Wisconsin, LLC, (xx) ITM Holding Co., LLC, (xxi) Interstate Southwest, Ltd., (xxii) Texas Foundries, Ltd., and (xxiii) MFC Liquidating Company, Ltd.



Bloome in Support Chapter 11 Petitions and First Day Orders; the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; due notice of the Motion having been provided to (1) the Office of the Bankruptcy Administrator for the United States Bankruptcy Court for the Northern District of Alabama, Southern Division; (2) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' prepetition lenders; (3) counsel to JPMorgan Chase Bank as Administrative Agent for the Debtors' proposed postpetition lenders; (4) the Debtors' twenty (20) largest unsecured creditors (on a consolidated basis); and (5) the District Director of Internal Revenue Service for the Northern District of Alabama; and it appearing that no other or further notice need be provided; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; upon the Motion and all of the proceedings before this Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

**ORDERED** that the Debtors are authorized to pay any unpaid prepetition amounts for Utility Services (as defined in the Motion) as same become due, provided that such payments shall not exceed \$7 million in the aggregate; and it is further

**ORDERED** that the Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services rendered by the Utility Companies (as defined in the Motion) to the Debtors; and it is further

**ORDERED** that any undisputed charge for Utility Services furnished by a Utility Company to the Debtors following the commencement of these cases shall constitute an administrative expense of the Debtors' chapter 11 cases in accordance with §§ 503(b) and 507(a)(1); and it is further

**ORDERED** that absent a further order of this Court, the Utility Companies are prohibited from altering, refusing, or discontinuing service to, or discriminating against, any of the Debtors, or requiring the payment of a deposit or other security in connection with a prepetition invoice for Utility Services, including, but not limited to, the furnishing of gas, electric, water, telephone, trash removal, or any other utility of like kind, furnished to the Debtors; and it is further

**ORDERED** that the Debtors shall serve a copy of this Order and the Motion upon each of the Utility Companies by first-class mail within five (5) business days after entry hereof; and it is further

**ORDERED** that this Order is without prejudice to the rights of any Utility Company to request, within twenty (20) days from the date hereof, additional assurance in the form of deposits or other security, and the burden of proof shall remain unaffected by the entry of this order; and it is further

**ORDERED** that any Utility Company which does not timely request additional assurance shall be deemed to have adequate assurance under Bankruptcy Code § 366; and it is further

**ORDERED** that in the event that a Utility Company timely requests additional adequate assurance, which the Debtors believe to be unreasonable despite a reasonable period for discussion and negotiation, the Debtors shall promptly file a Motion for the Determination of Adequate Assurance of Payment and request that this Court set such Determination Motion for a hearing (the "Determination Hearing"); and it is further

**ORDERED** that in the event a Determination Hearing is scheduled, the objecting Utility Company shall be deemed to have adequate assurance of payment pursuant to this Order unless

and until this Court enters a final order to the contrary resolving the Determination Hearing; and it is further

**ORDERED** that nothing in this Order shall be deemed to affect any burden of proof that either the Debtors or any Utility Company may have at the Determination Hearing; and it is further

**ORDERED** that the banks and financial institutions that process, honor and pay any and all checks on account of obligations to be paid pursuant to this Order are authorized to do so and may rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions; and it is further

**ORDERED** that nothing in this Order or the Motion shall be deemed to constitute postpetition assumption or adoption of any agreement pursuant to Bankruptcy Code § 365.

Dated this the \_\_\_\_ day of September, 2004.

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**UNITED STATES BANKRUPTCY JUDGE**